

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

**FILED**

**FEB 09 2015**

Clerk, U.S. District Court  
District Of Montana  
Missoula

ANTHEL L. BROWN,

Cause No. CV 15-11-M-DLC

Petitioner,

vs.

LEROY KIRKEGARD, et al.,

Respondents.

**ORDER DISMISSING PETITION  
AND DENYING CERTIFICATE OF  
APPEALABILITY**

This case comes before the Court on Petitioner Anthel Brown's application for writ of habeas corpus under 28 U.S.C. § 2254. Brown is a state prisoner proceeding pro se.

Brown alleges that the Montana Board of Pardons and Parole violates its previous rules, *Kelly v. Risley*, 865 F.2d 201 (9th Cir. 1989), and the Ex Post Facto Clause of the Constitution by reviewing his suitability for parole every three years rather than annually. Pet. (Doc. 1) at 2.

Brown has already litigated this claim in a habeas petition filed in this Court. See Form Pet. (Doc. 1) at 5 ¶¶ 12A-B; *id.* at 6 ¶ 12D; Pet. (Doc. 1) at 2, 10, *Brown v. Mahoney*, No. CV 04-66-H-DWM (D. Mont. filed Aug. 25, 2004); Order (Doc. 27) at 6-8, *Brown*, No. CV 04-66-H (D. Mont. filed Mar. 15, 2006). The Court of Appeals affirmed denial of the petition on July 22, 2009. Mem. at 2, *Brown v. Mahoney*, No. 06-35318 (9th Cir. July 22, 2009) (Doc. 38, *Brown*, CV 04-66-H).

Until Brown obtains leave from the Ninth Circuit Court of Appeals to file a successive habeas petition, *see 28 U.S.C. § 2244(b)*, this Court has no jurisdiction to hear his claim a second time, *Burton v. Stewart*, 549 U.S. 147, 149 (2007) (per curiam).

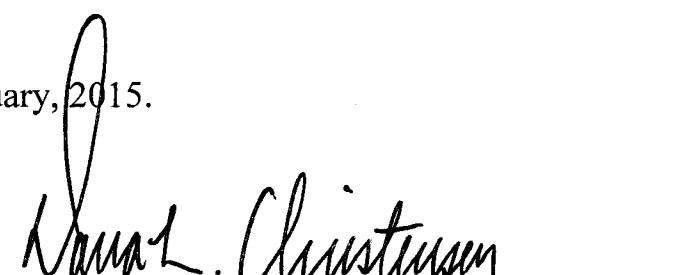
A certificate of appealability is denied. Brown fails to make a substantial showing he was deprived of a constitutional right, and there is no doubt this Court lacks jurisdiction. 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

Based on the foregoing, the Court enters the following:

**ORDER**

1. Brown's petition (Doc. 1) is DISMISSED for lack of jurisdiction.
2. The Clerk of Court is directed to enter, by separate document, a judgment of dismissal.
3. A certificate of appealability is DENIED.
4. This case is CLOSED. Other than a notice of appeal, no further documents will be accepted for filing.

DATED this 9<sup>th</sup> day of February, 2015.



Dana L. Christensen  
Chief Judge  
United States District Court